

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
CASE NO. 1:09-CV-646

HOWARD L. KASTEL TRUSTEE)
OF THE HOWARD L. KASTEL)
TRUST DATED NOVEMBER 13, 1985)
And JOAN H. KASTEL)
Plaintiffs)
v)
)
NUVEEN INVESTMENTS INC, NUVEEN)
INVESTMENTS LLC and ROBERT P.)
BREMNER and MESIROW FINANCIAL)
INC. and LAWRENCE M. COHEN
Defendants)

**PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION TO FILE
SURREPLY BRIEF IN OPPOSITION TO DEFENDANTS' MOTIONS TO
DISMISS SECOND AMENDED COMPLAINT**

Plaintiffs filed their Response to Defendants' Motions to Dismiss on February 28, 2011. In the Motion, Defendants rely in pertinent part on self serving allegations, that in the case of the Nuveen Defendants, they were far-removed from the conduct at issue. Both Defendants would have the Court believe that the Second Amended Complaints fails to allege facts to show

the existence a fraud. Both Nuveen and Mesirow were members of Finra and subject to its regulation. By this Motion, the Plaintiffs ask this Court to take Judicial Notice of Nuveen Investments' Consent to the findings of FINRA that, in pertinent part hold:

- 1) "that [Nuveen] did not adequately disclose the risks of Nuveen Funds ARPS, including the risks that auctions for the ARPS could fail, that investments could become illiquid, and that customers might not be able to access funds..."
- 2) "that the [sales materials] described the ARPS as safe and liquid investments."
- 3) "that the [sales materials] were not fair and balanced and did not provide a sound basis for evaluating the facts in regard to purchases of Nuveen Funds' ARPS."
- 4) "that the [sales materials] contained false and misleading statements."
- 5) that "Nuveen made negligent misrepresentations that violated Section 17(a)(2) of the Securities Act of 1933..."

The Facts Consented to by Nuveen in the Case and the Finra Press Release demonstrate that for purposes of Pleading, the Second Amended Complaint has the support of the leading regulatory authority. The Facts Consented provide additional authority to the allegations in the Complaint.

Attached is the Declaration of Howard L. Kastel in support of Plaintiffs' Motion for purpose of placing before the Court the referenced

documents cited herein and which documents Plaintiffs seek this Court to take Judicial Notice.

Respectfully Submitted,

By: /s/ Howard L. Kastel

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CERTIFICATE OF SERVICE This is to certify that on June 1, 2007 I electronically filed the forgoing Brief in support of Plaintiffs' Motion with the Clerk of the Court using the CM/ECF System with notice of case activity to be generated and sent electronically by the Clerk of Court to those parties registered to receive such service.

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